

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL APPEAL NO. 71 OF 2005

Nelson Morison Methew,
presently lodged in
Central Jail Aguada,
Sinquerim, Bardez, Goa.

... Appellant

versus

State of Goa,
as represented by
Officer-In-Charge,
Calangute Police Station,
Calangute, Bardez, Goa.

... Respondent

Mr. J. P. de Souza with Ms. Caroline Collasso, Advocates for the Appellant.

Mr. C. A. Ferreira, Public Prosecutor for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 23RD AUGUST, 2007.

ORAL JUDGMENT

Heard Mr. J. P. de Souza with Ms. C. Collasso, the learned Counsel on behalf of the Appellant and Mr. C. A. Ferreira, the learned Public Prosecutor on behalf of the Respondent.

2. The appeal has been restricted on the point of quantum of sentence. The learned Special Judge, N.D.P.S. Court has convicted the accused under

Section 21(b) of the N.D.P.S. Act, 1985(Act, for short) and sentenced him to undergo R.I. for a term of four years and to pay a fine of Rs.50,000/-, in default to undergo R.I. for one year.

3. The accused was arrested on 13-1-2001 with the allegation that he was found in possession of 130 gms. of heroin and 175 gms. of brown sugar. The said 175 gms. of brown sugar, when analyzed by Shri Purkait at the Central Forensic Science Laboratory turned out to be negative for brown sugar but were positive for paracetamol and caffeine which do not come under the purview of the Narcotic Drugs and Psychotropic Substances Act, 1985. As far as Exh. 1 i.e. 130 gms. of heroin which were in 26 cellophane packets, the same were tested positive for heroin and 10 of such packets were tested of percentage of heroin. Shri Purkait, the analyst, has given the percentage of each packet of the said 10 packets, average of which works out to 43.55%. On the basis of the said average, learned Counsel on behalf of the accused and the learned Public Prosecutor submit that it can be taken that the accused was found with 55.9 gms. of heroin in the total quantity of 130 gms. which was found with him. This would be in terms of the Judgment of this Court in the case of **Mr. Kasirye Alfani v. S. N. Salve**(Criminal Appeal No.12/2000 decided on 2/8 August, 2003) and followed in **Usman M. H. Shaik v. Union of India**(Criminal Appeal No.55/2004. In other words, the accused was found with variable quantity for which punishment provided is R.I. for a term which may extend to 10 years and fine to one lakh of rupees.

4. The Act has prescribed 5 gms. as small quantity and 250 gms. as commercial quantity. The accused was in custody from 14-1-2001 to 4-3-2002 i.e. for about a year and less than two months. It was submitted before the learned trial Court that the accused was 60 years of age and was suffering from diabetes and cardiac problems. It is also submitted now by the learned Counsel on behalf of the accused that at present the accused has secured a job and is employed and in case he is sent to jail, he will loose his job. The learned trial Court had also noted that there was delay in the trial of the accused, which reasons have been mentioned in para 73 of the Judgment.

5. Considering the facts of the case, the age of the accused and the quantity of heroin found with him the sentence imposed upon the accused under Section 21(b) appears to be rather inappropriate and harsh and considering the same, in my view, the same is required to be reduced to the period of detention undergone by the accused from 14-1-2001 to 14-3-2002 the fine imposed upon the accused, remaining unchanged.

6. The appeal is allowed on the above terms and the Judgment of the learned trial Court shall stand modified accordingly.

N. A. BRITTO, J.

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